

¹ The INS ceased to exist as an independent agency within the Department of Justice and its functions were transferred to the newly formed Department of Homeland Security on March 1, 2003. See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002).

1 released on parole. Petitioner alleges that on October 3, 2003, he was scheduled to be
 2 interviewed by an immigration agent, but that the agent failed to appear for the interview.
 3 On October 6, 2003, Petitioner was released by the California Department of Corrections into
 4 the custody of the Department of Homeland Security ("DHS"). Petitioner was taken to the
 5 Eloy Detention Center where he is currently confined.

6 In proceedings before an immigration judge, Petitioner claimed that because he was
 7 born in the U.S. Virgin Islands, he is a citizen of the United States. Petitioner argued that the
 8 immigration proceedings against him were the result of a misidentification. Petitioner argued
 9 that the immigration records that purported to show that he was born in Jamaica related to
 10 another person, Winston George Graham. On March 22, 2004, Respondent Sunyani
 11 Shabaka,² who is a DHS criminal investigator in California, testified telephonically at
 12 Petitioner's removal hearing in Eloy. Petitioner claims that Respondent Shabaka falsely
 13 testified that he personally interviewed Petitioner in the Tehachapi State Prison and that
 14 during the interview Petitioner admitted that he was born in Kingston, Jamaica. Petitioner
 15 also claims that the other named Respondents, Rosler, Mitchel and "Unknown
 16 Administrators," who are all officials at the Tehachapi State Prison, conspired with
 17 Respondent Shabaka to falsify records regarding Petitioner's identity and citizenship.

18 IMPROPER RESPONDENTS

19 Under 28 U.S.C. § 2243, a writ of habeas corpus must be "directed to the person
 20 having custody of the person detained." 28 U.S.C. § 2243; see also, 28 U.S.C. § 2242 (a
 21 petition for writ of habeas corpus must "name the person who has custody over" the
 22 petitioner). If the petition fails to name the petitioner's custodian as the respondent, the
 23 Court lacks *in personam* jurisdiction over the custodian and cannot grant relief. See Braden
 24 v. 30th Judicial Circuit Court, 410 U.S. 484, 494-95 (1973) ("The writ of habeas corpus does
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 27 ² The caption of the Petition lists Respondent's name as "Shabak Sunyani," but
 28 Exhibit F of the Petition, which includes Respondent's name and signature, lists his name as
 "Sunyani Shabaka."

1 not act upon the prisoner who seeks relief, but upon the person who holds him in what is
 2 alleged to be unlawful custody.”).

3 The United States Court of Appeals for the Ninth Circuit has held that the “proper
 4 respondent in a federal habeas corpus petition is the petitioner’s ‘immediate custodian.’”
 5 Brittingham v. United States Bd. of Parole, 982 F.2d 378, 379 (9th Cir.1992) (per curiam)
 6 (quoting Demjanjuk v. Meese, 784 F.2d 1114, 115 (D.C. Cir. 1986). “A custodian ‘is the
 7 person having a day-to-day control over the prisoner. That person is the only one who can
 8 produce ‘the body’ of the petitioner.” Id. (quoting Guerra v. Meese, 786 F.2d 414, 416
 9 (D.C. Cir. 1986). Petitioner’s custodian is the warden of the detention center where he is
 10 being held. Id. Here, Petitioner is in federal custody on immigration charges, but he has
 11 named a DHS criminal investigator and California Department of Corrections officials as
 12 respondents.

13 [W]hen a habeas petitioner has failed to name the proper respondent pursuant
 14 to § 2242, [the court] must ask *sua sponte* whether the respondent who *is*
 15 named has the power to order the petitioner’s release. If not, the court may not
 grant effective relief, and thus should not hear the case unless the petition is
 amended to name a respondent who can grant the desired relief.

16 Smith v. Idaho, 392 F.3d 350, 355 n.3 (9th Cir. 2004). Because none of the named
 17 Respondents are Petitioner’s custodians, they do not have the power to order Petitioner’s
 18 release.

19 Ordinarily, the Court would grant Petitioner leave to file an amended petition naming
 20 proper respondents. Here, however, Petitioner has another pending habeas corpus action
 21 challenging his removal order on the grounds that false evidence was used to support the
 22 Government’s assertion that he is not a citizen of the United States. See Graham v.
 23 Gonzalez, CV 04-2796-PHX-EHC (MS). By separate order, that action will be transferred
 24 to the United States Court of Appeals for the Ninth Circuit pursuant to § 106(c) of the REAL
 25 ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005). An amended petition in
 26 this action would be redundant. Accordingly, this action will be dismissed without prejudice
 27 to permit Petitioner to pursue his claim that he is a citizen of the United States in the Ninth
 28 Circuit. See Taniguchi v. Schultz, 303 F.3d 950, 955 (9th Cir. 2002) (the courts of appeals

1 retain **exclusive** jurisdiction under 8 U.S.C. § 1252(b)(5) to review a claim by a criminal
2 alien in removal proceedings that he is a citizen of the United States); Baeta v. Sonchik, 273
3 F.3d 1261, 1264-5 (9th Cir. 2001) (same).

4 **IT IS THEREFORE ORDERED** that the Petition and this action are **dismissed**
5 without prejudice and the Clerk shall enter judgment accordingly.

6 **IT IS FURTHER ORDERED** that Petitioner's Motion Requesting Subpoena (Doc.
7 #6) is **denied** as moot.

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9 DATED this 23rd day of September, 2005.

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Earl H. Carroll
14 United States District Judge
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